

REMARKS

This Application has been carefully reviewed in light of the Final Office Action mailed October 18, 2006. At the time of the Final Office Action, Claims 1-16 were pending in this Application. Claims 1-16 were rejected.

Rejections under 35 U.S.C. §103

Claims 1-16 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 5,978,476 issued to Scott Redman et al. ("Redman") in view of U.S. Patent 6,904,527 issued to David B. Parlour et al. ("Parlour"). Applicant respectfully traverse and submit the cited art combinations, even if proper, which Applicant does not concede, does not render the claimed embodiment of the invention obvious.

In order to establish a *prima facie* case of obviousness, the references cited by the Examiner must disclose all claimed limitations. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Furthermore, according to § 2143 of the Manual of Patent Examining Procedure, to establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

The present independent claim includes the following steps:

- (a) encrypting only a part of a control program code in a first development system,
- (b) transferring the encrypted control program code from the first development system to a second development system, and

(c) decrypting the encrypted control program code in the second development system, wherein the decryption of the partially encrypted control program code is carried out following editing of the partially encrypted control program code in the second development system. (Enumeration and emphasis added).

Parlour discloses a specific system that allows the use of code by a user which has been developed by a vendor. Similar as in the present application, in Parlour, a user 108 receives software from a vendor 113 for use in its development system 104. However, the respective software code is, similar as proposed by Redman, completely encrypted. The encryption method allows a user to use a plurality of different vendors. The decryption does not take place in the development system as required by the independent claims but rather takes place in an end product 102 developed by the user.

Contrary to such a specific implementation, the present invention as defined in the independent claims is directed to the provision of specific programs that are used in a development system. According to the present invention, a vendor can simplify such transactions by, for example, creating only a single software version with a plurality of functions. Optional functions can be encrypted, thus, they only can be implemented if the user knows the respective decryption code. A base version of this might not need an encryption key. Thus, a vendor can provide all users with the same version, but depending on the encryption key, different levels can be created.

As required by the independent claim, the transfer takes place between a vendor using a first development system and a user using a second development system. Comparing such a scenario with Parlour, the first development system is with the vendor 113 whereas the second development system is designated by numeral 104. The user receives an entirely encrypted file rather than a partially encrypted file. Moreover, the encrypted file which is embedded in the user's own code is not decrypted by the development system as required by the independent claims.

Parlour, thus, does not teach anything different from Redman. Parlour merely allows embedding of a plurality of different encrypted files within a users own code. The present application does not address such a scenario. A person skilled in the art would therefore not combine Redman and Parlour.

Applicants respectfully submit that the dependent Claims are allowable at least to the extent of the independent Claim to which they refer, respectively. Thus, Applicants respectfully request reconsideration and allowance of the dependent Claims. Applicants reserve the right to make further arguments regarding the Examiner's rejections under 35 U.S.C. §103(a), if necessary, and do not concede that the Examiner's proposed combinations are proper.

Information Disclosure Statement

Applicant would like to bring to the Examiner's attention that the Examiner made no indication that Reference "A" submitted with Information Disclosure Statement and PTO Form 1449 filed on March 27, 2006 had been considered in the Office Action mailed May 1, 2006 and not in the Final Office Action mailed October 18, 2006. Applicant respectfully requests confirmation of the consideration of Reference "A". Applicant attaches a copy of the PTO Form 1449 that was attached to the Office Action mailed May 1, 2006 and respectfully requests that the Examiner place his initials next to Reference "A" if citation is to be considered or draw a line through the citation if the citation is not to be considered.

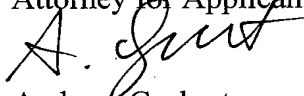
CONCLUSION

Applicant has made an earnest effort to place this case in condition for allowance in light of the remarks set forth above. Applicant respectfully requests reconsideration of all pending Claims.

Applicant believes there are no fees due at this time, however, the Commissioner is hereby authorized to charge any additional fees necessary or credit any overpayment to Deposit Account No. 50-2148 of Baker Botts L.L.P.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Andreas Grubert at 512.322.2545.

Respectfully submitted,
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